



## *Report to the Auburn City Council*

Action Item
Agenda Item No. <b>5</b>
<i>[Signature]</i> City Manager's Approval

**To:** Honorable Mayor and City Council Members  
**From:** Robert Richardson, City Manager  
Andy Heath, Administrative Services Director  
**Date:** April 25, 2011  
**Subject:** CalPERS Contract Amendment Urgency Ordinance – Section 21362 (2% @ 50 Full Formula) for Local Safety Members

### *The Issue*

Shall the City Council readopt Ordinance No. 11-01 as an Urgency Ordinance approving an amendment to the Contract between the City of Auburn and CalPERS providing Public Employees' Retirement Law Section 20475 (Different Level of Benefits) for local safety members whereby Section 21362 (2% @ 50 Full Formula) is applicable to local safety members entering membership for the first time in the safety classification after the effective date of the amendment to the contract?

### *Conclusions and Recommendations*

Readopt Ordinance No. 11-01 as an **URGENCY ORDINANCE**, approving an amendment to the contract between the City of Auburn and CalPERS, providing Public Employees' Retirement Law Section 20475 (Different Level of Benefits) for local safety members whereby Section 21362 (2% @ 50 Full Formula) is applicable to local safety members entering membership for the first time in the safety classification after the effective date of the amendment to the contract.

### *Background*

On September 13, 2010, the City Council approved Resolutions No. 10-116 and 10-117 adopting the Memoranda of Understanding (MOU) with the Auburn Police Officer's Association and the Auburn Firefighter's Association, respectively. Additionally, the City Council will consider the recommended approval of the Auburn Police Sergeant's Association MOU on February 14, 2011. As referenced in all three of the aforementioned MOU's, the City and each respective association have agreed to amend the contract with CalPERS to provide the Public Employees' Retirement Law Section 21362 (2% @ 50 Full Formula) benefits for local safety members entering membership for the first time in the safety classification after the effective date of the amendment to the contract. This

will significantly reduce the cost to the City of retirement benefits for new hires in these bargaining units.

As a means to begin the process of implementing the necessary changes to the CalPERS contract, the City Council approved Resolutions No. 11-04 and 11-05 on January 10, 2011, effectuating the intent to amend the City's contract with CalPERS and disclosing the cost of providing the enhanced benefit, respectively. The final step in the contract amendment implementation process is to enact an ordinance codifying the change to the benefit structure.

On February 28, 2011, the City approved a second reading of the ordinance effectuating the aforementioned benefit changes to the CalPERS contract. Inconsistent with CalPERS requirements, however, the second and final reading of the ordinance was erroneously placed on the City Council Agenda Consent Calendar. The action recommended herein, coupled with the placement of this item on the agenda for discussion as a non-consent business item, enables the City to move forward with the contract amendment process. Because of timing issues, it is recommended that this ordinance be readopted as an urgency ordinance to take effect immediately.

**Alternatives Available to Council; Implications of Alternatives**

1. Readopt the ordinance as an urgency ordinance as recommended by staff.
2. Do not readopt the ordinance and direct staff accordingly. This option may require legal advice regarding the City's obligations under existing MOUs with employee bargaining units.

**Fiscal Impact**

Future annual costs will be 14.172% of reportable earnings for local safety members entering the membership for the first time after the effective date of the amendment to the contract.

Attachments – Feb. 28, 2011 Report to City Council (Contract Amendment Ordinance)  
Draft Amendment to CalPERS Contract

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Section Four: Effective Date. Pursuant to Section 36937(B) of the California Government Code, this Ordinance shall take effect immediately because its passage is required for the immediate preservation of the public peace, health, and safety. The facts constituting the emergency are these: the City is obliged by existing memoranda of understanding with employee bargaining units to provide reduced retirement benefits to new employees hired into those units and needs to do so to reduce the cost of those benefits in light of pressing, adverse economic circumstances. The ordinance was previously adopted pursuant to consent calendar action, which is not acceptable to PERS, accordingly it is necessary to readopt the ordinance as a non-consent business item and to have the matter take effect immediately to fulfill the City's obligations to its employees and to protect its fiscal position so it can continue to provide essential public services for the protection of the public peace, health and safety.

Section Five:      Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

DATED: April 25, 2011

WILLIAM W. KIRBY, MD, Mayor

ATTEST:

Joseph G. R. Labrie, City Clerk

1 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify  
2 that the foregoing ordinance was duly passed at a regular meeting of the City  
3 Council of the City of Auburn held on the 25th day of April 2011 by the  
following vote on roll call:

4 Ayes:

5 Noes:

6 Absent:

7 \_\_\_\_\_  
Joseph G. R. Labrie, City Clerk

8  
9 APPROVED AS TO FORM:

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12 \_\_\_\_\_  
13 Michael G. Colantuono, City Attorney



## EXHIBIT

California  
Public Employees' Retirement System

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# AMENDMENT TO CONTRACT

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Auburn

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The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective July 1, 1970, and witnessed March 31, 1970, and as amended effective July 1, 1973, November 1, 1978, July 1, 1984, June 24, 1993, June 16, 1996, September 16, 2000, April 16, 2002, April 10, 2003 and July 1, 2010 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 13 are hereby stricken from said contract as executed effective July 1, 2010, and hereby replaced by the following paragraphs numbered 1 through 14 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.
  2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1970 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
  - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
  - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.
  - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
  - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
  - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.
  - (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.
  - (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
  - a. Local Fire Fighters (herein referred to as local safety members);
  - b. Local Police Officers (herein referred to as local safety members);

PLEASE DO NOT SIGN "EXHIBIT ONLY"

- c. Employees other than local safety members (herein referred to as local miscellaneous members).
- 5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
  - a. **PERSONS COMPENSATED ON AN HOURLY BASIS.**
- 6. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to July 30, 1973, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
- 7. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member entering membership in the safety classification on or prior to the effective date of this amendment to contract shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
- 8. The percentage of final compensation to be provided for each year of credited current service as a local safety member entering membership for the first time in the safety classification after the effective date of this amendment to contract shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
- 9. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Section 20042 (One-Year Final Compensation).
  - b. Section 21222.1 (One-Time 5% Increase - 1970). Legislation repealed said Section effective January 1, 1980.
  - c. Section 20965 (Credit for Unused Sick Leave).
  - d. Section 21024 (Military Service Credit as Public Service).
  - e. Section 20903 (Two Years Additional Service Credit).
  - f. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local fire members only.



- g. Section 20475 (Different Level of Benefits). Section 21362 (2% @ 50 Full formula) is applicable to local safety members entering membership for the first time in the safety classification after the effective date of this amendment to contract.
- 10. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on November 1, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
- 11. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
- 12. Public Agency shall also contribute to said Retirement System as follows:
  - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local fire members.
  - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
  - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
- 13. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

14. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF AUBURN

BY \_\_\_\_\_  
LORI MCGARTLAND, CHIEF  
EMPLOYER SERVICES DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk



## *Report to the Auburn City Council*

Action Item

Agenda Item No.

City Manager's Approval

**To:** Honorable Mayor and City Council Members  
**From:** Robert Richardson, City Manager  
Andy Heath, Administrative Services Director  
**Date:** February 28, 2011  
**Subject:** CalPERS Contract Amendment Ordinance – Section 21362 (2% @ 50 Full Formula) for Local Safety Members – Second Reading

### *The Issue*

Shall the City Council adopt an Ordinance approving an amendment to the Contract between the City of Auburn and CalPERS providing Public Employees' Retirement Law Section 20475 (Different Level of Benefits) for local safety members whereby Section 21362 (2% @ 50 Full Formula) is applicable to local safety members entering membership for the first time in the safety classification after the effective date of the amendment to the contract?

### *Conclusions and Recommendations*

By **ORDINANCE**, approve an amendment to the contract between the City of Auburn and CalPERS, providing Public Employees' Retirement Law Section 20475 (Different Level of Benefits) for local safety members whereby Section 21362 (2% @ 50 Full Formula) is applicable to local safety members entering membership for the first time in the safety classification after the effective date of the amendment to the contract.

### *Background*

NOTE: This item constitutes a second reading of a proposed ordinance to amend the agreement between the City of Auburn and the California Public Employee's Retirement System. The initial reading was part of the February 14, 2011 City Council Agenda.

On September 13, 2010, the City Council approved Resolutions No. 10-116 and 10-117 adopting the Memoranda of Understanding (MOU) with the Auburn Police Officer's Association and the Auburn Firefighter's Association, respectively. Additionally, the City Council will consider the recommended approval of the Auburn Police Sergeant's Association MOU on February 14, 2011. As referenced in all three of the aforementioned MOU's, the City and each respective association have agreed to amend the contract with CalPERS to provide the Public Employees' Retirement Law Section 21362 (2% @ 50

Full Formula) benefits for local safety members entering membership for the first time in the safety classification after the effective date of the amendment to the contract.

As a means to begin the process of implementing the necessary changes to the CalPERS contract, the City Council approved Resolutions No. 11-04 and 11-05 on January 10, 2011, effectuating the intent to amend the City's contract with CalPERS and disclosing the cost of providing the enhanced benefit, respectively. The final step in the contract amendment implementation process is to enact an ordinance codifying the change to the benefit structure.

**Alternatives Available to Council; Implications of Alternatives**

1. Adopt the ordinance as recommended by staff.
2. Do not adopt the ordinances and direct staff accordingly.

**Fiscal Impact**

Future annual costs will be 14.172% of reportable earnings for local safety members entering the membership for the first time after the effective date of the amendment to the contract.

Attachment – Draft Amendment to CalPERS Contract  
PRIOR STAFF REPORT